(34)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 635

AMMIEL F. DECKER AND MABEL P. DECKER, INDIVIDUALS, TRADING AND DOING BUSINESS AS DECKER PRODUCTS COMPANY,

Petitioners,

vs.

THE FEDERAL TRADE COMMISSION

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

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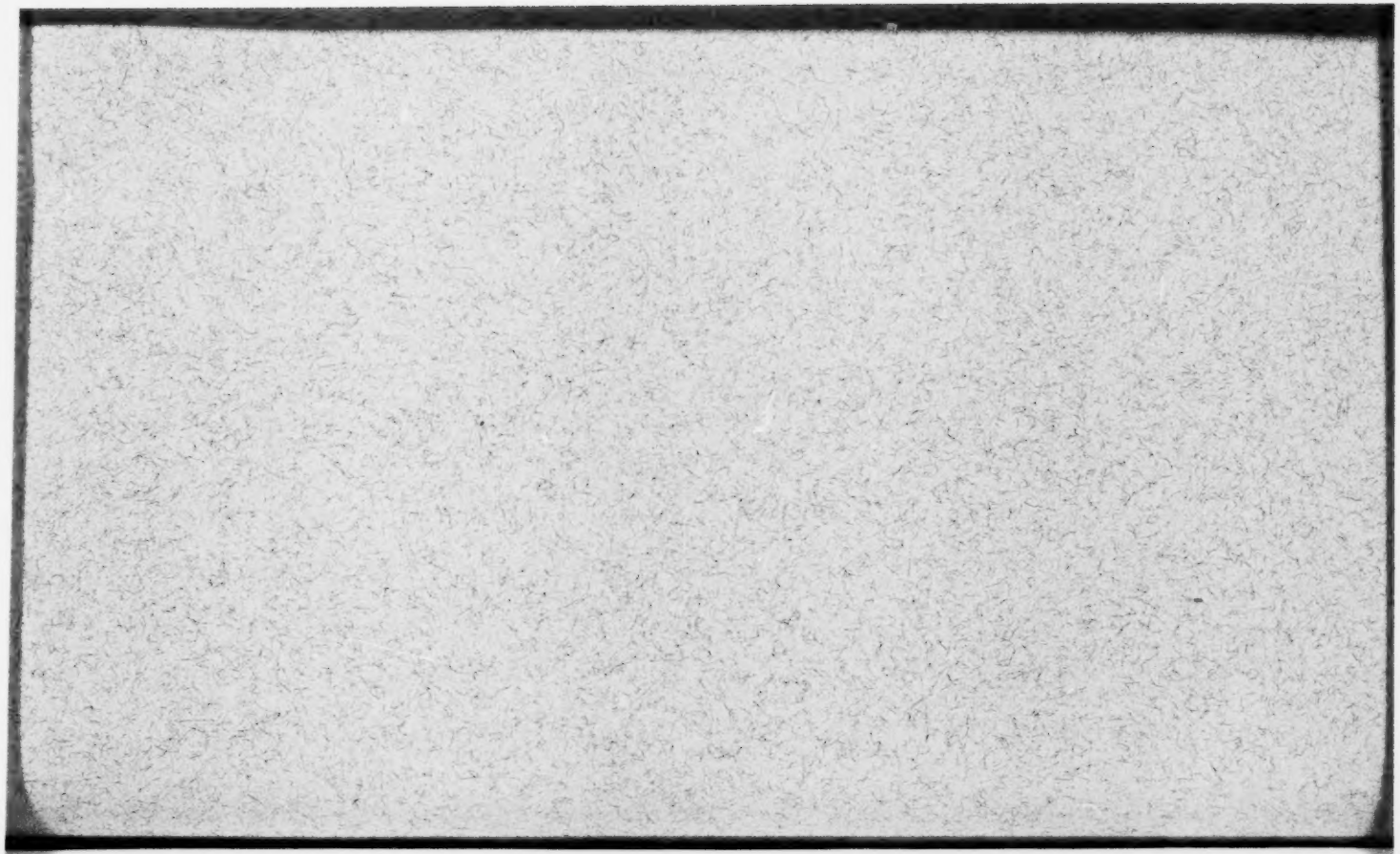

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STATUTES CITED

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 635

AMMIEL F. DECKER AND MABEL P. DECKER, INDIVIDUALS, TRADING AND DOING BUSINESS AS DECKER PRODUCTS COMPANY,

Petitioners,

vs.

THE FEDERAL TRADE COMMISSION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

The petitioners, Ammiel F. Decker and Mabel P. Decker, individuals, trading and doing business as the Decker Products Company, of Pelham, New York, pray that a writ of certiorari issue to review the order and judgment of the United States Court of Appeals for the District of Columbia, entered in the above entitled cause on June 26, 1944. Order or opinion on reconsideration filed July 26, 1944.

Opinion Below

The order or opinion of the United States Court of Appeals is in the record. (R. 27.) The final order or opinion on reconsideration is in the record. (R. 38.)

The order or opinion of the Federal Trade Commission is in the record. (R. 15.)

Jurisdiction

The order or opinion of the United States Court of Appeals for the District of Columbia was filed on June 26, 1944, (R. 27), and judgment was entered June 26, 1944 (R. 27) and order on reconsideration was entered July 26, 1944 (R. 38). The jurisdiction of the Court is invoked under the provisions of Title 28 U. S. C. Sec. 347 (Judicial Code, Sec. 240) the Act of March 3, 1911, ch. 231, Sec. 240, 36 Stat. 1157; Feb. 13, 1925, ch. 229, Sec. 1, 43 Stat. 938; Jan. 31, 1928, ch. 14, Sec. 1, 45 Stat. 54; June 7, 1934, ch. 426, 48 Stat. 926.

Questions Presented

1. Whether the Federal Trade Commission by the provisions of the Federal Trade Commission Act, approved September 26, 1914, as amended by the Act of March 21, 1938, 15 U. S. C., Secs. 41 to 52, and more especially Sub-sec. (b) of Sec. 45 thereof, or by any other Act, is vested with jurisdiction to issue and serve a complaint upon the owners of a patent or of a patented invention, and in a proceeding involving the patent or patented inventions and patent rights, proceed to a hearing and enter a cease and desist order against such patent owner which prevents such patent owner from advertising and selling a patented invention, which patent rights arise out of and are reasonably within the stated objects and scope of the patent, and prevents

the owner from advertising, selling and enjoying the monopoly granted by the patent.

2. Whether the Federal Trade Commission, by the provisions of the Federal Trade Commission Act, approved September 26, 1914, as amended by the Act of March 21, 1938, Title 15 U. S. C. Secs. 41 to 52, and more especially Sub-sec. (b) of Sec. 45 thereof, or by any other Act, is vested with jurisdiction in a proceeding before it to issue a complaint and proceed to a hearing and enter a cease and desist order against a patentee, or patent owner, and involving patent rights acting within the scope of the patent and in effect challenging the validity and utility of the patent and patented invention.

3. Whether patents and patented inventions are exempt from the application and enforcement of the Federal Trade Commission Act, approved September 26, 1914, as amended by the Act of March 21, 1938, Title 15 U. S. C. Secs. 41 to 52, and more especially Sub-sec. (b) of Sec. 45 thereof.

4. Where no cease and desist order has been made and filed by the Federal Trade Commission under the provisions of Title 15 U. S. C. of Sub-sec. (b), (c) and (d) of Sec. 45 thereof, but the lack of jurisdiction in the Federal Trade Commission is especially pleaded as a complete defense to a proceeding before it involving patents and patent rights and is decisive of the case, whether an appeal will lie to the Circuit Court of Appeals from the order of the Federal Trade Commission overruling the plea to the jurisdiction and motion to dismiss the complaint which said motion is based upon the complaint, answer and exhibits thereto.

Constitution and Statutes Involved

The Federal Trade Commission Act, approved September 26, 1914, as amended by an Act approved March 21,

1938, Title 15 U. S. C. Secs. 41 to 52, and more especially Sub-secs. (b), (c) and (d) of Sec. 45 thereof.[1]

Title 35 U. S. C. Sec. 31, authorizing the granting of patents.[2]

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[1] "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful. * * * Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. * * * If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by sections 41 to 46 and 48 to 58 of this title * * * and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership or corporation to cease and desist from using such methods of competition or such act or practice. * * * Title 15 U. S. C. sub-sec. (b) of Sec. 45. "Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the Circuit Court of Appeals of the United States * * * by filing in the Court, within sixty days from the date of the service of such order, a written petition praying that the order of the Commission be set aside. * * * The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in Title 28 U. S. C. 347." Title 15 U. S. C. Sub-sec. (b) and (c) of Sec. 45.

[2] "Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof * * * not known or used by others in this country, before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country before his invention or discovery thereof, or more than one year prior to his application, and not in public use or on sale in this country for more than one year prior to his application, unless the same is proved to have been abandoned, may, upon payment of the fees required by law, and other due proceeding had, obtain a patent therefor." Title 35 U. S. C. Sec. 31.

Title 35 U. S. C. Sec. 40, providing for the duration of patents.[3]

Title 28 U. S. C. Sec. 371, par. 5, conferring exclusive jurisdiction on the United States District Courts over patents, patent rights and patent litigation.[4]

The Constitutional policy of the United States with reference to patents and inventions. U. S. Constitution, Art. 1, Sec. 8.[5]

The Fifth Amendment to the U. S. Constitution.[5]

Statement

The facts in the record and passed upon by the United States Court of Appeals may be summarized as follows:

Ammiel F. Decker, one of the petitioners, invented an "Exhaust device for Internal Combustion Engines," and on April 3, 1941 filed an application in the United States Patent Office for a patent, the patent involved in this proceeding. On January 12, 1943 a patent was granted and assigned the number of 2,308,059. (See petitioners' answer to complaint, R. pp. 33 to 38, and patent as exhibit thereto, R. pp. 22 to 22D.)

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[3] "Every patent shall contain a short title or description of the invention or discovery, correctly indicating its nature and design, and a grant to the patentee, his heirs or assigns, for the term of seventeen years, of the exclusive right to make, use and vend the invention or discovery • • • throughout the United States and the territories thereof, referring to the specifications for the particulars thereof. A copy of the specifications and drawings shall be annexed to the patent and be a part thereof." Title 35 U. S. C. A. Sec. 40.

[4] "Exclusive Jurisdiction of United States Courts."

"Fifth. Of all cases arising under the patent-right, or copyright laws of the United States." Title 28 U. S. C. Sec. 371, par. 5.

[5] "To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." Art. 1, Sec. 8 of U. S. Constitution.

"Nor shall private property be taken for public use without just compensation." Fifth Amendment to the Constitution.

The objects of the patent are stated in the footnote below.[6] For specification and claims, see patent, R. pp. 22 to 22D.

Soon after the granting of the patent, the patentee organized the Decker Products Company and through it commenced to practice and use the invention by manufacturing, advertising and selling it on the market and to the public generally for which there was a great demand. The invention was a huge success and large numbers were manufactured and sold by the petitioners to the automotive trade generally and the invention became in general use. The device was manufactured and sold under the trade name of "Vacudex." (See complaint, R. pp. 9 to 13, and answer thereto, R. pp. 33 to 38).

The representations made by petitioners in advertising and selling their invention, on a fair and reasonable con-

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[6] "This invention relates to exhaust connections for internal combustion engines used in automobiles, airplanes, boats, or stationary installations, and more particularly to such exhaust connections that provide means for conditioning the exhaust gases from the engine.

"One object of my invention is to provide means to change the chemical nature of the exhaust gases, whereby they are made safer to inhale and the odor is made less objectionable.

"Another object is to mix the exhaust gases with air to change the carbon monoxide into harmless gases and thereby do away with the danger of inhaling carbon monoxide.

"Another object is to reduce the back pressure on the engine and thereby reduce the gasoline consumption and increase the power of the motor.

"Another object is to reduce condensation of the exhaust gases in the exhaust pipe and muffler with consequent lessening of rusting of these parts.

"Another object is to provide means for injecting air into the exhaust connection at an angle so that the cool air from the outside impinges upon the inner surface of the same, thereby cooling the exhaust connection and reducing, consequently, the temperature of the exhaust gases.

"Another object is to provide a device of this kind which is simple in construction and inexpensive to manufacture.

"Another object is to provide a means for accomplishing the above advantages, which can be incorporated in the exhaust connection of the engine or applied thereto as an attachment for engines already constructed.

"Other objects of this invention will appear in the following description and claims:" * * * (Lines 1 to 38 page 1 of Patent) (R. p. 22B).

struction of the patent, are based on, arise out of and are reasonably within the scope of the patent and are the following:

That the invention saves oil and gasoline; adds 18 to 50 miles more per tankful; adds more power and pep to the motor; creates suction and, like a vacuum cleaner, draws carbon and moisture from the muffler, eliminating back pressure, saves muffler; saves tail pipe; motor vibration is reduced; improves pick-up and flexibility; motor runs smoother; muffler lasts longer; and saves tires. (See par. 3 Complaint, R. p. 10). (See objects and specifications of patent, R. p. 22B, 22C).

December 11, 1943, while petitioners were engaged in the practice and use of their invention by manufacturing, advertising and selling the same to the public, the respondent served a complaint upon petitioners, without making reference to the objects set forth in petitioners' patent, but substantially reading upon the objects, specifications and claims thereof, charging that the representations made by petitioners with reference to the benefits derived from their patented invention were false, misleading and deceptive and in violation of the Federal Trade Commission Act, and in effect challenged the validity and utility of petitioners' patent and invention.[7] (R. pp. 9 to 13).

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[7] "Paragraph Two: Respondents (petitioners here) are now and for more than one year last past have been engaged in the sale and distribution of an exhaust muffler attachment, designated as "Vacudex," advertised as a device to save gasoline and effect other economies in the operation of automobiles and trucks. The device consists of a pipe which clamps onto the end of the exhaust pipe and in which are placed four cones set at angles so that as the vehicle moves forward air is forced into the cones and presumably creates a spiral motion of the air in the exhaust pipe. (Par. 2 of Complaint, R. pp. 9 to 10.)

"Paragraph Three: In the course and conduct of their business, and for the purpose of inducing the purchase of said products in commerce, respondents have made and are now making certain false, deceptive and misleading statements and representations regarding said product by means

February 18, 1944, petitioners prepared and filed an answer to the complaint and, among other things, relied upon their patent as a complete defense to the charges of the complaint, and fully exhibited and pleaded the said patent as a defense thereto and further especially pleaded that the respondent Federal Trade Commission, because of the involvement of said patent, was wholly without jurisdiction to proceed (R. 33 to 38). On February 18, 1944 petitioners filed a motion before respondent, based upon complaint and answer and exhibits, including petitioners' said patent, to dismiss the complaint and the proceeding upon the ground that petitioners' patent was exempt from the provisions of the Federal Trade Commission Act because of the involvement of their patent and that the respondent was wholly without jurisdiction over petitioners, their said patent and patented invention [8] (R. pp. 13 to 14).

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of radio broadcasts, circulars and advertisements inserted in newspapers and periodicals circulated generally among the purchasing public. Typical representations are as follows: Vacudex saves gas and oil. Vacudex adds 18 to 50 miles more a tankful. Also adds power and pep to your motor. Creates suction and like a vacuum cleaner draws carbon, oil and moisture from the muffler thereby eliminating back pressure. Saves muffler. Saves tail pipes. Motor vibration is reduced. Deadly carbon monoxide gas reduced. Improves pick-up and flexibility, motors run smoother and quieter, mufflers last longer. Saves tires. (Par. 3, Complaint, R. p. 10.)

"Paragraph Five: The foregoing representations are false, deceptive and misleading in the following respects:

"The device designated 'Vacudex' does not save gasoline or oil or increase the mileage obtained from gasoline. It does not increase the power of the motor or cause it to give better performance. It does not draw carbon, oil or moisture from the muffler, nor does it eliminate back pressure. It does not lengthen the useful life of either tail pipe or muffler. The device does not reduce vibration of the motor. It does not decrease the amount of carbon monoxide gas produced by the motor. It does not give the motor greater acceleration, or less strain, or cause it to run more smoothly or quieter. It does not cause less wear on the tires." (Par. 5 of Complaint, R. p. 11.)

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[8] "The alleged mispresentations and deceptive statements in the complaint regarding the advertising and sale of respondents' patented and trade-marked product "Vacudex" arises out of, are authorized by, are based

March 1, 1944, the respondent Federal Trade Commission overruled petitioners' motion to dismiss the proceeding, based on complaint, answer, and exhibit, on the ground of jurisdiction and exemption of petitioners' patent from the provisions of the Federal Trade Commission Act[9] (R. p. 15).

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on and are fully within the intent, objects, specifications, drawings, claims and scope of certain letters patent, U. S. Patent No. 2,308,059, entitled "Exhaust Device for Internal Combustion Engines," issued to one of the respondents, namely Ammiel F. Decker, by the U. S. Patent Office under date of January 12, 1943 (see Letters Patent, exhibit No. 1 respondents' answer) and now owned by respondent and because of which and in spite of the Federal Trade Act respondents are legally justified in making alleged misrepresentations complained of in the lawful practice, manufacture, use, advertising, sale and enjoyment of said patented and trade-marked device "Vacudex" under and by the exclusive legal monopoly granted them by the patent laws of the United States and that, therefore, the alleged misrepresentations and deceptive statements taken from the objects of the invention set forth in the patent are not in violation of the Federal Trade Commission Act, and respondents' (petitioners here) patented and trade-marked device "Vacudex" is exempt from the application and operation thereof by the patent laws of the United States." • • •

"That the Commission is wholly without power, authority, or jurisdiction by this proceeding or otherwise to interfere with respondents in the practice, manufacture, use, advertising, sale and enjoyment of said patent monopoly and that the attempt here made to do so by the Commission is in violation of the Constitutional policy of the United States regarding letters patent and patented inventions and patent laws of the United States enacted under that policy.

"That in effect this proceeding by the Commission challenges the utility and validity of respondents' letters patent based on the statement of objects therein and that the Commission is wholly lacking in power and jurisdiction to consider and determine such issue or to question in any way such patent which has been granted by and under the seal of the United States Patent Office after exhaustive examination and tests by that branch of the Government."

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[9] "This matter coming on to be heard by the Commission upon the motion filed herein on February 18, 1944 by Ammiel F. Decker and Mabel P. Decker, individuals, trading and doing business as Decker Products Company, respondents herein, to dismiss the complaint heretofore issued on December 11, 1943, on the complaint and answer and exhibits thereto, and upon the request of the respondents for oral hearing on said motion and the Commission having duly considered said motion and the record herein and being now fully advised in the premises; It Is Ordered that

April 5, 1944, petitioners filed in the United States Court of Appeals for the District of Columbia a petition for review of the said order of respondent denying their motion to dismiss the complaint and proceeding (R. 1 to 4).

On April 22, 1944, the respondent Federal Trade Commission made a motion in the United States Court of Appeals to dismiss petitioners' petition for review upon the ground that the Federal Trade Commission had not made and entered an order to cease and desist, and that the order was not final, and because of which the United States Court of Appeals was without jurisdiction (R. 4 to 8), but respondent admitted in its motion to dismiss that the advertising of petitioners complained of was within the scope of petitioners' patent. (See par. 7 of Respondent's motion to dismiss, R. 7.) There is no dispute that the allegations of the complaint read on the objects, specifications and claims of the patent.[10] (See Complaint, R. 9 to 13; See patent R. 22 to 22D.)

June 26, 1944, the United States Court of Appeals for the District of Columbia sustained the respondents motion

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the motion to dismiss the complaint and the request for oral hearing on said motion be, and the same hereby are, denied without prejudice to the right of respondents to renew said motion upon the final hearing of the case."

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[10] "The Court being without jurisdiction, it is unnecessary to argue the merits of petitioners' claim respecting the Commission's lack of jurisdiction. It may be observed, however, that a patent is not a license to engage in unfair competition. *And the fact that petitioners' representations respecting their patented device correspond with the claims and specifications of their letters patent* neither confers upon petitioners any privilege to disseminate such representations if they are in fact false, nor deprives the Commission of jurisdiction to determine their truth or falsity and prohibit their dissemination if false. (Par. 7 of Respondents Motion to dismiss Petition for Review, R. 7.)

to dismiss petitioners' peition for review and an order was entered by the Court to that effect [11] (R. 27).

July 10, 1944, petitioners filed a motion in said Court requesting reconsideration of its order in sustaining respondent's Motion to Dismiss petitioners' petition for review (R. 28 to 32).

July 26, 1944, the Court of Appeals overruled petitioners' motion to reconsider, and entered an order to that effect [12] (R. 38).

Specification of Errors To Be Urged

The United States Court of Appeals for the District of Columbia erred:

1. In sustaining the motion of the respondent Federal Trade Commission to dismiss petitioners' petition for review and in entering an order to that effect.

2. In failing to sustain petitioners' petition for review and in failing to reverse the order of the respondent Federal Trade Commission in overruling petitioners' motion to dismiss the complaint and the proceeding for lack of jurisdiction, and in failing to quash and dismiss the complaint and the proceedings.

3. In denying petitioners' motion for reconsideration of the order of the Court in dismissing petitioners' petition for review.

Reasons for Granting the Writ

The decision of the Federal Trade Commission, as sustained by the United States Court of Appeals, in effect,

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[11] "On consideration of respondents' motion to dismiss the petition for review in the above-entitled case, and petitioners' objections thereto, it is Ordered by the Court that the petition for review in this case be, and it is hereby, dismissed."

[12] "On consideration of petitioners' motion for reconsideration of the order dismissing the petition for review in this cause it is Ordered by the Court that the motion for reconsideration be, and it is hereby, denied."

holding that patentees are without protection and a patent is no defense to the complaint of respondent and is not exempt from the application and enforcement of the Federal Trade Commission Act; that, in effect, the respondent Federal Trade Commission is vested with jurisdiction over patent litigation, patents and patent rights and can challenge the validity of patents, is in conflict with statutes conferring exclusive jurisdiction on United States District Courts over patent litigation, Title 28 U. S. C. Sec. 371, par. 5; the statute authorizing the granting of patents, Title 35, U. S. C. Sec. 31; the statute authorizing a monopoly of 17 years for patents, Title 35 U. S. C. Sec. 40; the Constitutional policy of the United States to foster, protect and encourage inventors and inventions as set forth in Article 1, Sec. 8 of the U. S. Constitution; and destroys petitioners' patent and property without just compensation in violation of the Fifth Amendment to the Constitution of the United States.

In so far as peitioners have been able to ascertain, this is the first case in which respondent Federal Trade Commission has challenged patents and patent rights and has endeavored to apply the provisions of the Federal Trade Commission Act to them, but there are analogous cases in which attempt has been made to apply the provisions of the Sherman Antitrust Act, Title 15 U. S. C. Secs. 1 to 7; and the Clayton Act, Title 15 U. S. C. Secs. 15 to 19, and this Court and the lower courts have held that patent and patent rights are exempt from the provisions of these acts. Therefore, the decision of the Court of Appeals is in conflict with the principles of law declared in *Bement* v. *National Harrow Co.*, 186 U. S. 70, 83, 84, 89, 91, 46 L. Ed. 1058, 22 S. Ct. 747, 756; *Steiner Sales Co.* v. *Schwartz Sales Co.*, 98 Fed. (2) 999, 1007, 1008.

The decision of the Court of Appeals is in conflict with the well settled principles of law announced in *In re Chet-*

wood, Petitioner, 165 U. S. 443, 462, 17 S. Ct. 385, 41 L. Ed. 782; *American Construction Co.* v. *Jacksonville, T. & K. W. Ry. Co.,* 148 U. S. 372, 13 S. Ct. 758, 37 L. Ed. 486; *Phillips* v. *Negley,* 117 U. S. 665, 671, 672, 29 L. Ed. 1013, 6 S. Ct. 901; *Degge* v. *Hitchcock,* 35 App. D. C. 218, affirmed 229 U. S 162, 33 S. Ct. 639, 57 L. Ed. 1135; *Harris* v. *Barber,* 129 U. S. 366, 32 L. Ed. 697, 9 S. Ct. 314; *United States* v. *Ickes,* 84 Fed. (2) 257, 259; *Greyerbiehl* v. *Hughes Electric Co.,* 294 Fed. 802, 805, 806, wherein this Court and the lower courts consistently and uniformly held that, if an order or decision was made without jurisdiction on the part of the court making it (here respondent Federal Trade Commission), said order or decision must be reviewed by an appellate court, whether such order or decision was interlocutory or final, though an appeal of right does not lie from an interlocutory order or decision, and, on review, it is the duty of the appellate court to quash and dismiss the complaint or proceeding, thus furnishing an efficient remedy by summarily bringing to an end protracted and expensive litigation.

The questions presented for decision are of gravity and of general importance to inventors, patent owners and to the public generally because, if the respondent is vested with jurisdiction to prevent the advertising and sale of patented articles by the issuance of cease and desist orders, this is equivalent to destroying patents and property without just compensation protected by the Fifth Amendment to the Constitution, and tends to great confusion in the application and administration of the patent laws. It is, we think, clearly apparent that the problem here presented will constantly recur unless finally settled by the Court, and we believe the granting of the writ of certiorari is sustained by the rule in *Royal Indemnity Co.* v. *United States of America,* 313 U. S. 289, 293, 85 L. Ed. 1361; *Worcester County Trust Co.* v. *Riley,* 302 U. S. 292, 296 82 L. Ed. 268,

58 S. Ct. 185; *International Ry. Co.* v. *Davidson*, 257 U. S. 506, 510 42 S. Ct. 179, 66 L. Ed. 341; *Magnum Import Co.* v. *Coty*, 262 U. S. 159, 163, 43 S. Ct. 531, 67 L. Ed. 922.

Therefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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BRIEF

Statement of Fact

The facts are stated in the petition, pages 5 to 11.

ARGUMENT

There is no dispute as to the complete involvement of petitioners' patent in this proceeding and that the advertising by petitioners of their patented device "Vacudex" complained of by respondent Federal Trade Commission is based on, is fully authorized by, and is reasonably within the scope of the patent. This is admitted by respondent as follows:

> * * * "And the fact that petitioners' representations respecting their patented device corresponds with the claims and specifications of their letters patent" * * * (Par. 7 Respondent's Motion to Dismiss petitioners' petition for review, R. p. 7, also foot note 10, of petition, p. 10).

In addition to the foregoing admission by the respondent, the advertising of petitioners of their patented device "Vacudex" complained of by the Federal Trade Commission as alleged in its complaint is a mere *paraphrasing* of the objects and intent of petitioners' patent. (Compare allegations of the complaint, R. pp. 9 to 13, or see foot note 7 of petition, p. 7 to the objects and intent of petitioners' patent, lines 1 to 55, page 1, and lines 1 to 75 page 2 of petitioners' patent, R. pp. 22B to 22D. See Comparison and anlaysis of allegations of complaint to objects and intent of petitioners' patent, R. pp. 23 to 27).

Point 1

That the writ should be granted. (See Petition pp. 11 to 14.)

Point 2

That the Federal Trade Commission is without jurisdiction and the complaint should be quashed and dismissed. (See petition pp. 3-5; 11-14.)

Point 3

That patents are exempt from the provisions of the Federal Trade Commission Act. (Petition pp. 3-5; 11-14.)

We think the foregoing points are sufficiently discussed in the petition without elaboration here.

Conclusion

The petitioners respectfully urge that the writ of certiorari should be granted and the case considered by this Honorable Court, and the order and judgment of the United States Court of Appeals for the District of Columbia and that of the Federal Trade Commission be reversed and the complaint quashed and dismissed.

Respectfully submitted,

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October 26th, 1944.

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